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Adjustment date: 08/03/2005 TPLUNKET
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910 SEVENTEENTH STREET, NW
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WASHINGTON, DC 20006

In re Application of :
Norman J. Moore et al :
Serial No.: 09/458,998 : PETITION DECISION
Filed: December 10, 1999 :
Attorney Docket No.: :

This is in response to the petition under 37 CFR 1.181, filed April 22, 2005, requesting withdrawal of abandonment based on timely filing of a reply.

A review of the file history shows that the examiner mailed a non-Final Office action to applicants on January 16, 2002, setting a three month shortened statutory period for reply. Applicants filed a reply on May 16, 2002, including a request and fee for a one month extension of time. The amendment was deemed non-compliant and applicant notified on June 7, 2002, with a compliant amendment being submitted on July 8, 2002. On October 11, 2002, the examiner mailed a new non-Final Office action to applicants, again setting a three month shortened statutory period for reply. (This was the fourth action in the application and third non-Final action.) Applicants filed a Notice of Appeal on April 11, 2003, accompanied by a request and fee for a three month extension of time. Applicants filed an Appeal Brief on October 14, 2003, including a request and fee for a four month extension of time, the Brief being considered timely as October 11, 2003, was a Saturday and Monday, October 13, 2003, a Federal holiday.

The examiner mailed a Notice of Non-Complaint Appeal Brief to applicants on January 23, 2004, indicating that the reasons why the claims do not stand or fall together had been omitted. Applicants submitted a revised Brief on March 23, 2004, including a request and fee for a one month extension of time. On June 10, 2004, the examiner mailed a Notification of Non-Compliance with 37 CFR 1.192(c) **stating that the Notice of Appeal was defective as the claims had not been twice rejected or finally rejected.** The Notice indicated that the Appeal Brief was defective, but gives no reason why it is defective, only that the Notice of Appeal is defective. Applicants replied to the Notice stating that the claims had been twice rejected (in actuality four times rejected, including a Final rejection) although they were not finally rejected in the last Office action. The examiner then mailed a Notice of Abandonment to applicants on March 28, 2005, stating that a proper reply to the Office actions of 10/14/03 and 3/23/04 had not been received.

The examiner's statements are completely in error. A proper reply in the form of an amended Appeal Brief was filed in response to the October 14, 2003, Notice of Non-Compliance. The March 23, 2004, Notice did not object or find any fault with the Appeal Brief, but stated erroneously that the claims had not been twice or finally rejected. Such statement was totally false as the application had been rejected at least four times.

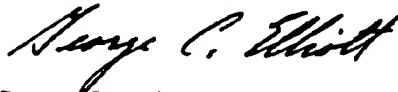
In view of applicants' timely compliance with all of the examiner's requirements the Notice of Abandonment is found to have been mailed in error and is withdrawn and the application restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

The application will be forwarded to the examiner for preparation of the Examiner's Answer or other action, as appropriate.

As there is no fee for this petition the Petition Fee paid of \$400.00 will be credited to applicants' Deposit Account No. 19-1027, as directed.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.



George C. Elliott
Director, Technology Center 1600